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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 JOHN EDWARD ROACH,

12 Petitioner,

13 v.

14 ELDON VAIL,

15 Respondent.
16

CASE NO. C09-5155 RBL

ORDER ADOPTING REPORT AND
RECOMMENDATION DENYING
WRIT OF HABEAS CORPUS

17 This matter comes before the Court on the Report and Recommendation of the
18 Honorable J. Richard Creeatura, United States Magistrate Judge, that this 28 U.S.C. § 2255 writ
19 of habeas corpus be denied and this action dismissed with prejudice. The Petitioner has filed a
20 pleading entitled “Power to Grant Writ” which the Court construes as Petitioner’s objections to
21 the Report and Recommendation.

22 Petitioner is seeking federal habeas relief, pursuant to 28 U.S.C. § 2254, from a 2006,
23 Pierce County Superior Court conviction for assault of a child in the second degree. The Pierce
24 County Superior Court sentenced him to 41 months incarceration, plus community supervision
25 after release.
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1 As detailed in the Report and Recommendation, Petitioner has failed to exhaust any of
2 the asserted grounds for relief. Also, because Petitioner is no longer in custody and is finished
3 with community supervision, he cannot return to state court and thus, the petition is procedurally
4 barred. Concerning Petitioner's allegation of actual innocence, the Petitioner presents nothing
5 but impeachment evidence in support of his claim and impeachment evidence provides no basis
6 to support a claim of actual innocence. Calderon v. Thompson, 523 U.S. 538, 563 (1998).
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8 The Court, having reviewed the file, the Report and Recommendation of the Hon. J.
9 Richard Creatura, United States Magistrate Judge, objections to the Report and
10 Recommendation, and the remaining record, does hereby find and Order:

- 11 (1) The Court adopts the Report and Recommendation;
12 (2) This action is **DISMISSED** as it is procedurally barred;
13 (3) Petitioner is not entitled to a certificate of appealability; and
14 (4) The Clerk's Office is directed to send a copy of this order to petitioner.
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16 DATED this 4th day of June, 2010.

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18 RONALD B. LEIGHTON
19 UNITED STATES DISTRICT JUDGE
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